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Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street NW
Washington, DC 20552

Attention: Docket No. 2000-91

This letter is in response to the proposed rulemaking relating to 12 CFR Part 584, Docket No. 2000-91, RIN 1550-AB29, Savings and Loan Holding Companies Notice of Significant Transaction or Activities AND OTS Review of Capital Adequacy. To summarize our comments at the outset, we are strenuously opposed to the regulation of savings and loan holding companies as proposed, as we do not agree with:

1. The basic premise for the need for regulation,
2. we find that exemption for certain institutions are not logical,
3. the notice requirements are potentially extremely harmful to the transacting of business and will likely stifle many transactions in holding companies,
4. the notice requirements are far too extensive due to the 12-month requirement,
5. the added record keeping required by the proposed regulations will be unnecessarily burdensome, and
6. while capital levels are not currently being proposed for holding companies, any approach to setting capital limits is inappropriate when dealing with the diverse entities that make up today's holding company environment.

We will address each of these issues of opposition in the order listed above.

Basic Premise

Page 4 of the proposed rulemaking details the basis premise regarding the need for this legislation, stating "... many savings associations are subject to decisions that are made with regard to the best interests of the corporate structure, often with little consideration of any potential positive or negative impact on the thrift standing

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alone." While we agreed that this can take place, we argue there are currently appropriate safeguards in the system to protect the thrift. Regulations restricting transactions with affiliates and the ability of OTS to restrict the dividend flow to the holding company are two major examples of these safeguards.

Exemptions

Page 10 of the proposed rulemaking states that " . . . OTS would not require a holding company to file a notice if all of its subsidiary thrifts have consolidated assets that, when aggregated, represent less than 20 percent of the holding company's consolidated assets." This exemption seems curious as if holding company financial difficulties flowing through to the thrift is the concern, as discussed on page 4, it would seem likely that the larger the holding company in relation to the thrift, the more likely a holding company could affect the thrift. Speaking from a small holding company perspective, one wonders if the political clout of the large diversified holding companies has any bearing on this exemption.

Notice and Its Negative Effect on the Holding Company

Speaking again from the small holding company perspective, any notice provision, especially in the area of asset acquisitions, has the potential to severely restrict and possibly negate very profitable business for the holding company. In the case of our holding company whose major non-thrift subsidiary is a refuse company, the subsidiary has routinely over the past decade purchased other smaller refuse companies. These companies, generally family owned and with sizable assets, are hotly pursued by multiple purchasers. Speed and flexibility are imperitive to be successful – something the proposed notice requirements would not allow.

Further, these notice requirements extend over far too long a time period. Not only does the proposed regulation provide for the filing of "a written notice with its OTS Regional Office at least 30 days before the earlier of engaging in or committing to engage in the transaction or activity," as stated on page 17, but the "OTS would be permitted to extend the 30-day review for an additional 30 days" (page 20) with no apparent justification. It is also assumed that the usual OTS standard applies that if the notification is not deemed complete for any reason or if additional information is requested, the 30-day clock starts all over again. A potential acquisition as outlined in the previous paragraph cannot survive this type of notice requirement.

12 Month Requirement

The proposed rule states that transactions requiring notice include the following: the issuance, renewal or guarantee of debt which would increase the holding company's liabilities by 5% or more if the holding company's liabilities after the transaction

equal or exceed 50% of the holding company's tangible capital; any activity or transaction resulting in a 10% reduction to the holding company's tangible capital; any asset acquisition exceeding 15% of holding company consolidated assets. All of these calculations are net of the thrift.

The proposed rule requires combining **all** transactions over the previous twelve months to determine whether or not the above thresholds have been reached. As a result, even a de minimus transaction would trigger notification requirements (assuming other activity during the previous twelve months affected assets, liabilities, or equity in excess of the above limitations). Effectively, any and every transaction from that point forward would require 30 days notification to the OTS if the transaction either increases assets, increases liabilities, or decreases equity. Such a requirement would effectively stifle all further activity at the holding company and holding company non-thrift subsidiary levels unless the activity reduces assets, reduces liabilities or increases equity.

In essence, by implementing these proposed rules, the agency is limiting holding company and holding company non-thrift subsidiaries' annual growth rate to 15% of assets and 5% of debt. Also, every expenditure would require notice after the point at which tangible capital were to decline by 10% or more during any twelve month rolling period. The OTS at this point would be effectively managing all holding company and non-thrift holding company subsidiary operations. The OTS is charged with regulating the thrift industry, not managing it. This proposal simply goes too far in its restrictions and notification requirements. In fact, it applies even greater restrictions at the holding company and non-thrift level than that which is applied at the thrift level.

Record Keeping Burden

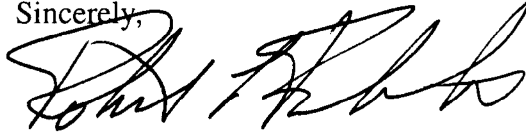
In addition to the above concerns, these rules, if implemented, would significantly increase the record-keeping burden. The holding company must calculate tangible capital and tangible assets on a regular basis where no such requirement exists today. Before entering into **any** transaction, a determination must be made as to whether or not the limits documented above have been reached. This burden is excessive and unnecessary to ensure the safety and soundness of the thrift.

Required Capital Levels

Attempting to establish capital requirements at almost any level for such a diverse population of holding companies, and doing it fairly and equitably, is seemingly an impossible task. It is true that the Federal Reserve Board does have capital adequacy requirements for bank holding companies, but these requirements affect a very homogenous population of financial entities. Savings and loan holding companies do

companies do not have this homogenous quality, and thereby each requires differing levels of capital necessary for their unique mix of companies. Using our holding company as an example, having refuse and recycling companies as our major non-bank subsidiaries, these companies generally contain high levels of assets (rolling stock, plant and equipment) with relatively low capital requirements (in relation to financial institutions). Requiring the same or similar capital levels for our non-bank subsidiaries would not only be unnecessary but would put us at a competitive disadvantage in the marketplace. Attempting to dial in the appropriate capital for each individual holding company or type of industry represented within a holding company also seems impractical and unworkable, as each would necessitate individual underwriting. Not only would this require substantial financial and personnel related resources from the OTS, but it would also require a level of expertise that it would be very difficult for OTS to attain and maintain.

Sincerely,



Robert L. Fenstermacher
Executive Vice President

RLF/cfd